

SUPPLEMENTAL AGREEMENT, Made this 25 day of April, 1970, between HAMILTON NORTHERN R.R., a Delaware corporation (successor in interest by merger to Great Northern Railway Company, a Minnesota corporation), hereinafter called the "Railroad," and ANACONDA ALUMINUM COMPANY, a Montana corporation, hereinafter called the "Industry."

WITNESSETH:

WHEREAS, Great Northern Railway Company and Anaconda Aluminum Company by instrument dated October 12, 1967 entered into an Industrial Track Agreement relating to the rearrangement, construction, maintenance, operation and ownership of a system of trackage at Industry's plant at Conkelley, Montana; and

WHEREAS, the Industry desires the removal, rearrangement and construction of trackage within its plant as shown colored solid yellow, dashed yellow, dashed red and solid red on the plan attached hereto, marked Exhibit "A" and by this reference made a part hereof.

NOW THEREFORE, it is mutually agreed between the parties as follows:

SECTION 1. The Industry shall first procure and furnish without expense to the Railroad all necessary right of way, including all necessary public authority and permission for the rearrangement, construction, maintenance and operation of the track.

SECTION 2. The Industry will, at its own expense, do all necessary grading for rearrangement and construction of said track.

The Railroad will, at expense of the Industry, construct the track shown colored solid red, rearrange the track shown in dashed yellow to the location shown in dashed red and remove the track shown in solid yellow on Exhibit "A".

The Railroad will, at the expense of the Industry, maintain the track shown colored solid red and dashed red and the Industry will own the same.

In the event of separation of the grade of said track and of any highway being ordered by public authority, the Industry will indemnify the Railroad against any expense in connection therewith or consent to the removal of the track.

SECTION 3. Upon completion of said removal, rearrangement and construction, the Industry shall pay to Railroad the sum of Seventeen Thousand Five Hundred Forty-one and No/100 Dollars (\$17,541.00), the agreed cost of the work and materials to be furnished by the Railroad at the expense of the Industry.

The Industry shall pay to the Railroad from time to time the cost of the maintenance, additions and betterments, done by the Railroad, herein agreed to be borne by the Industry, within twenty (20) days after bills are rendered therefor.

Should the Industry do any work of construction, maintenance, or of additions and betterments, it shall do such work in substantial and workmanlike manner, and in accordance with the Railroad's standards. If the Industry fails to pay the bills for the maintenance of the track within the prescribed time the Railroad may refuse to operate over it.

SECTION 4. "Cost" for the purpose of this agreement shall be actual labor costs plus assignable additives for payroll taxes, vacation allowances, and insurance against employers' liability; material and supplies to be charged at current value where used. Rental for equipment shall be on a no-profit basis to the Railroad. Necessary engineering and superintendence shall be provided by the Railroad without cost to the Industry.

SECTION 5. The Railroad shall have the right to use the track when not to the detriment of the Industry.

SECTION 6. The Industry shall not place, or permit ☐ be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 6, then the Industry shall strictly comply with such statute or order.

SECTION 7. The Industry shall pay all compensation and assessments required at any time by any municipality, public authority, corporation or person, for the privilege of constructing, maintaining and operating said track.

SECTION 8. The Industry agrees to indemnify and hold harmless the Railroad for loss, damage or injury from any act or omission of the Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

SECTION 9. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad, and for any departure in this respect the Railroad may terminate this agreement.

SECTION 10. All of the terms and conditions of said agreement dated October 12, 1967 shall apply to the maintenance and operation of the rearranged and newly constructed track herein and as modified and amended hereby, said agreement dated October 12, 1967 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.


BURLINGTON NORTHERN INC.

By


Vice President

ANACONDA ALUMINUM COMPANY

By


Title: Engineering Manager